

1997

State of Utah v. Carl Alton Winfield Jr. : Brief of Appellee

Utah Court of Appeals

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Jeffery P. Gleave; Attorney for Defendant/Appellant.

Dexter L Anderson; Chief Deputy County Attorney for Millard County, Utah; Attorney for Plaintiff/Appellee.

Recommended Citation

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BRIEF

UTAH
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DOCKET NO. 970130-CA

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

vs.

CARL ALTON WINFIELD, Jr.,

Defendant/Appellant.

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APPELLEE'S ADDENDUM

Case No. 970130-CA

Case priority No. 2
(Defendant/Appellant is incarcerated
because of a parole violation. The
conviction in this case however,
was the basis for the parole
violation.)

BRIEF OF APPELLEE
STATE OF UTAH

APPEAL

AN APPEAL FROM A FINAL JUDGMENT
ENTERED BY THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR MILLARD COUNTY
THE HONORABLE FRED D. HOWARD, PRESIDING.
(Case Below No. 961401116)

Jeffery P. Gleave (6390)
Attorney for Defendant/Appellant
Cal Alton Winfield, Jr.
195 North 100 East, Suite 205
Richfield, Utah 84701

Dexter L Anderson (084)
Chief Deputy County Attorney
For Millard County, Utah
Attorney for Plaintiff/Appellee
765 South Highway 99
Fillmore, Utah 84631

FILED

MAY 22 1998

COURT OF APPEALS

ADDENDUM TABLE OF CONTENTS

ADDENDUM A.....	<u>PAGE</u> ①
ADDENDUM B.....	⑧
ADDENDUM C.....	③⑦
ADDUNDUM D.....	④⑦

ADDENDUM A

Utah vs Carl Alton Winfield, Jr.

DOB: 3-4-68

#961401116 FS

Address: 4851 West Coriander Dr
Kearns, UT 84119

Telephone: 963-7901

10-1-96: Defendant brought in by jailer, Steve O'Camb. Provided copy of information and advised of charges and purpose of hearing.

Bail Hearing

* Stephen Alford & Roger Young *

Claims will be at any hearing -
only desire is to prove the charges
are false -

- don't have much money -

- on federal supervised release -

attorney attempting to clean up
record.

not married
no children
not employed

convicted of Bank Robbery -
sentenced to prison -
released March 1985 -

Pleaded to Burglary 1986 -
DUI 1987

003

Assault on Police Officer - Convicted
Motion for release on own recognizance
held placed by U.S. Marshall +
Federal District Court for violation
of supervised release.

2500
2000
750
250

Bail: \$5,000⁰⁰. Cash only.

To appear in 4th District Court
on October 10, 1996 @ 10:00 a.m.

ORIGINAL

IN THE 4TH JUDICIAL DISTRICT FILLMORE COURT
MILLARD COUNTY, STATE OF UTAH

STATE OF UTAH	:	
	:	PLAINTIFF,
	:	NOTICE
	:	
-VS-	:	CASE NO. 961401116 FS
CARL ALTON JR WINFIELD	:	HONORABLE DONALD J EYRE
DEFENDANT.	:	

PLEASE BE ADVISED THAT THE ABOVE-NAMED CASE HAS BEEN SET BEFORE
JUDGE DONALD J EYRE, AS FOLLOWS:

THIS CASE IS SET FOR ARRAIGNMENT.

DATE: OCTOBER 10, 1996	TIME: 10:00 A.M.
PLACE: ROOM 1	ADDRESS: 4TH DISTRICT COURT
	765 S. HIGHWAY 99
	FILLMORE UT 84631
	PHONE: (801) 743-6223

DATED THIS 7TH DAY OF OCTOBER, 1996.

Sharon M. Dutton
JUDGE/DEPUTY CLERK

COPIES MAILED TO PARTIES OR COUNSEL AT THE ADDRESSES INDICATED ON
THE ATTACHED MAILING CERTIFICATE.

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I MAILED A TRUE AND CORRECT COPY OF THE
ATTACHED NOTICE, BY FIRST CLASS MAIL, POSTAGE PREPAID,
TO THE FOLLOWING:

DEXTER L. ANDERSON
ATTORNEY FOR PLAINTIFF
750 SOUTH HIGHWAY 99
S. R. BOX 52
FILLMORE UT 84631

CARL ALTON JR. WINFIELD
~~ATTORNEY FOR DEFENDANT~~
% MILLARD COUNTY JAIL
S. R. BOX 50
FILLMORE UT 84631

SLAVENS, JAMES K
PROSECUTING ATTY
750 SOUTH HIGHWAY 99
STAR ROUTE BOX 52
FILLMORE UT 84631

DATED THIS 17th DAY OF October 19 96.

Sharon M. Dalton
Deputy Clerk

(5)

M14N-854

EAST MILLARD JUSTICE COURT
HONORABLE RONALD R. HARE
FILLMORE, UTAH 84631

CASE NUMBER	STATUS	CASE TITLE	FILING DATE	CASE TYPE/ FILING TYPE	CITATION NUMBER
J-1411-FR-0000960047	COMPLETED	UTAH V CARL ALTON WINFIELD JR	10-01-96	FELONY MAGISTRATE COURT	
PARTIES-	DO1 WINFIELD CARL ALTON JR	4851 WEST CORIANDER DR KEARNS		UT 84119	
EVENTS-	DATE	SEQ#	CODE	EVENT DESCRIPTION	AMOUNT RECEIPT

FILED
COUNTY CLERK & EX OFFICIO CLERK
OF THE DISTRICT COURT

OCT 15 1996

MILLARD COUNTY

VOLUME-PAGE 548 DE

10-01-96 01 403 BAIL HEARING HELD
PARTY: DO1 DEFENDANT BROUGHT IN BY JAILER STEVE OCAMB. PROVIDED COPY OF
INFORMATION AND ADVISED OF CHARGES AND PURPOSE OF HEARING.
AFTER ARGUMENT THE COURT SET BAIL AT \$5,000 CASH ONLY.
DEFENDANT ORDERED TO APPEAR IN FOURTH DISTRICT COURT
MUNICIPAL DEPARTMENT ON OCTOBER 10, 1996 AT 10:00 A.M.

961401116 FS

10-01-96 02 512 CASE ORDERED TRANSFERRED TO**
PARTY: DO1 FOURTH DISTRICT COURT, MUNICIPAL DEPARTMENT

10-11-96 01 360 RETURN FILED WITH DISTRICT CT
PARTY: DO1

***** DEFENDANT RECORD FOR 01 WINFIELD CARL ALTON JR DOB: 03-04-68 *****

ARREST DATE: WARRANT: WARRANT DATE: ARRESTING AGENCY: MILLARD COUNTY SHERIFF'S OFC
BOOKING ID: BOOKING DATE: JAIL AGENCY: MILLARD COUNTY SHERIFF'S OFC
BOND TYPE: RELEASE DATE: BOND AGENCY: \$5,000
ARRAIGNMENT DATE: INIT. APPEAR:
TRIAL TYPE: NON-JURY 1ST TRIAL: TRIAL START: DAYS: HOURS: JUDGE:

CHARGES AND DISPOSITION				SENTENCING			
COUNT: 01	SEQ: 01	INITIAL CHARGE:	DISORDERLY CONDUCT	SENTENCE:		DATE:	
		INITIAL PLEA:		INT CONFINEMENT:			
		FINAL CHARGE:		JAIL TIME:		HRS COMM. SERVICE:	0
		FINAL PLEA:		PROBATION:		ENDS:	
		DISPOSITION:	TRANSFERRED	FINES:	\$.00		
		DISPOSITION DATE:	10-01-96	COSTS:	\$.00	RESTITUTION:	\$.00
COUNT: 02	SEQ: 01	INITIAL CHARGE:	ABUSE-DISABLED/ELDER ADULT	SENTENCE:		DATE:	
		INITIAL PLEA:		INT CONFINEMENT:			
		FINAL CHARGE:		JAIL TIME:		HRS COMM. SERVICE:	0
		FINAL PLEA:		PROBATION:		ENDS:	
		DISPOSITION:	TRANSFERRED				

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EAST MILLARD JUSTICE COURT
HONORABLE RONALD R. HARE
FILLMORE, UTAH 84631

* * * * * DEFENDANT RECORD FOR 01 WINFIELD CARL ALTON JR

DOB: 03-04-68 * * * * *

C H A R G E S A N D D I S P O S I T I O N		S E N T E N C I N G	
DISPOSITION DATE: 10-01-96		FINES:	\$.00
		COSTS:	\$.00 RESTITUTION: \$.00
03 SEQ: 01 INITIAL CHARGE: ABUSE-DISABLED/ELDER ADULT			
INITIAL PLEA:		SENTENCE:	DATE:
FINAL CHARGE:	INT CONFINEMENT:		
FINAL PLEA:	JAIL TIME:	HRS COMM. SERVICE:	0
DISPOSITION: TRANSFERRED	PROBATION:	ENDS:	
DISPOSITION DATE: 10-01-96	FINES:	\$.00	
	COSTS:	\$.00 RESTITUTION:	\$.00
04 SEQ: 01 INITIAL CHARGE: THREAT AGAINST LIFE/PROPERTY			
INITIAL PLEA:		SENTENCE:	DATE:
FINAL CHARGE:	INT CONFINEMENT:		
FINAL PLEA:	JAIL TIME:	HRS COMM. SERVICE:	0
DISPOSITION: TRANSFERRED	PROBATION:	ENDS:	
DISPOSITION DATE: 10-01-96	FINES:	\$.00	
	COSTS:	\$.00 RESTITUTION:	\$.00
: 05 SEQ: 01 INITIAL CHARGE: THREAT AGAINST LIFE/PROPERTY			
INITIAL PLEA:		SENTENCE:	DATE:
FINAL CHARGE:	INT CONFINEMENT:		
FINAL PLEA:	JAIL TIME:	HRS COMM. SERVICE:	0
DISPOSITION: TRANSFERRED	PROBATION:	ENDS:	
DISPOSITION DATE: 10-01-96	FINES:	\$.00	
	COSTS:	\$.00 RESTITUTION:	\$.00

CERTIFICATE
East Millard Precinct Court
County of Millard, State of Utah

Ronald R. Hare, Justice Court Judge of the above entitled Court, certify that the foregoing is a full, true and correct copy of the original as filed and now of record

In this office, consisting of 45 pages.

Dated this 15th day of October, 1996

Signed Ronald R. Hare
Justice Court Judge

By _____
Clerk

ADDENDUM B

(copy)

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STATE OF UTAH

X X X

STATE OF UTAH,
Plaintiff,

vs.

CARL ALTON WINFIELD, JR.
Defendant.

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Hearing Transcript

Criminal No. 961401116

BE IT REMEMBERED that on October 24, 1996, the
Hearing was electronically recorded before the Honorable
Donald J. Eyre at the Millard County Courthouse, Fillmore,
Utah, and was transcribed by Richard C. Tatton, a certified
shorthand reporter and Notary Public.

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A P P E A R A N C E S

For the State of Utah: Mr. Dexter L. Anderson
 750 South Highway 99
 Star Route Box 52
 Fillmore, UT 84631

 and

 Mr. James K. Slavens
 750 South Highway 99
 Star Route Box 52
 Fillmore, UT 84631

For the Defendant: Mr. Lawrence H. Hunt
 195 North 100 East
 Suite #205
 Richfield, UT 84701

P R O C E E D I N G S

THE COURT: The court calls the case of State of
Utah vs. Carl Alton Winfield.

MR. CARL WINFIELD: Your Honor, I have a motion
and some other information for the record.

THE COURT: Okay. Let's go through the initial
appearance and then you can take that matter up.

MR. CARL WINFIELD: Okay.

THE COURT: You've got copied information before
you?

MR. CARL WINFIELD: Yes.

1 THE COURT: Okay. Is Carl Alton Winfield, Jr.
2 your true and correct name?
3 MR. CARL WINFIELD: That's correct.
4 THE COURT: What is your address?
5 MR. CARL WINFIELD: I don't have an address.
6 THE COURT: Okay. Is your date of birth March 4,
7 '68?
8 MR. CARL WINFIELD: Yes, it is.
9 THE COURT: We charge the information with five
10 counts. Count 1 charges you with a Class "C" Misdemeanor
11 of disorderly conduct. Alleging that on or about September
12 the 30th of this year that you refused to comply with the
13 lawful order of a police officer, remove yourself from a
14 public place, or did knowingly create a hazardous or
15 physical offensive condition by an act which serves
16 belligerent purpose.
17 Count 2 charges you with a Class "A" Misdemeanor of
18 abuse of disabled or elder adult. Alleging that on or
19 about that same date that under circumstances were most
20 likely to produce death or a serious physical injury, did
21 intentionally or knowingly cause a disabled or elder adult,
22 to wit: Carl Alton Winfield, Sr., to suffer a physical
23 injury, abuse or neglect.
24 Count 3 charges you with the same, first of all...A
25 Class "A" Misdemeanor has a potential penalty of

1 confinement in the Millard County Jail for a period up to
2 one year, and a fine of up to \$2500.00.

3 Count 3 charges you with, also with a Class "A"
4 Misdemeanor, abuse of disabled or elder adult. Alleging
5 that under circumstances, under them was likely to produce
6 death or serious physical injury, did intentionally or
7 knowingly cause the disabled or elder adult, to wit: Ruth
8 Winfield, to suffer physical injury, abuse or neglect.

9 Count 4 charges you with a Class "B" Misdemeanor, a
10 threat against life or property. Alleging on or about that
11 same date that you did threaten to commit an offense
12 involving violence with intent to place a person in fear of
13 eminent serious bodily injury, to wit: threatened to kill
14 his father, Carl Alton Winfield, Sr.

15 A Class "B" Misdemeanor has a potential penalty of
16 confinement in the Millard County Jail for a period not to
17 exceed six months, and/or a fine up to \$1,000.00.

18 Count 5 charges you with a Class "B" Misdemeanor, a
19 threat against life or property. Alleging that on that
20 same date that you did threaten or commit an offense
21 involving violence with intent to place a person in fear or
22 eminent serious bodily injury, to wit: threatened to kill
23 his grandmother, Ruth Winfield. Do you understand the
24 charges?

25 MR. CARL WINFIELD: No.

1 THE COURT: What questions do you have concerning
2 them?
3 MR. CARL WINFIELD: None.
4 THE COURT: Excuse me?
5 MR. CARL WINFIELD: No questions.
6 THE COURT: Okay.
7 MR. CARL WINFIELD: I do have a motion and some
8 other information for the record.
9 THE COURT: Okay. Just a second and we'll get to
10 those. You have the right to be represented by an attorney
11 at every stage in these proceedings. If you cannot afford
12 an attorney and can qualify to be indigent the court will
13 appoint one for you.
14 MR. CARL WINFIELD: At every stage that's
15 involved in the proceeding, when does that begin, when is
16 that?
17 THE COURT: Right now. That's why I am informing
18 you of that right.
19 MR. CARL WINFIELD: Okay. I've appeared at two
20 separate hearings already.
21 THE COURT: Well, this is the first time you've
22 appeared before me so I'm informing you of those rights.
23 If you cannot afford an attorney the court will appoint one
24 for you. Are you requesting the court to appoint you an
25 attorney?

1 MR. CARL WINFIELD: I only want to submit a
2 motion and some other information on the record.

3 THE COURT: Okay. What is your motion?

4 MR. CARL WINFIELD: The motion to dismiss charges
5 based on State misconduct. The Defendant having been in
6 custody for approximately ten days, and appearing at two
7 hearings. As of yet, I have not been afforded by
8 constitutional requirement for legal representation.

9 Also, as a result of other constitutional violations
10 existing in this case and to preserve appellate rights, I
11 would submit to the record at this time clear and
12 convincing evidence that the Defendant is not competent to
13 stand trial, nor shall remain in custody of Millard County
14 Jail facilities.

15 Several psychologists have diagnosed the Defendant as
16 suffering a variety of mental illnesses that are as of yet
17 untreated. Mike Decaire, a Ph.D. criminal justice
18 services, State of Utah; Jeffrey Harris, Ph.D., contracted
19 by the Department of Rehabilitation; James Richarte, North
20 Valley Mental Health, Salt Lake City, to name a few.

21 The Defendant within the last year was made eligible
22 to receive services from the Department of Rehabilitation
23 based on mental disabilities. Locational rehabilitations
24 most recent program stipulation from the Defendant is a
25 psychiatric treatment and therapy program that has not yet

1 occurred. A psychiatrist, Dr. Gant of 1027 East South
2 Temple, was paid by both rehab to conduct the 18 separate
3 sessions with the Defendant. As stated, that has not yet
4 occurred.

5 Last, the Defendant will request the court to
6 immediately transfer the Defendant to a hospital facility
7 that can accommodate his psychological needs for treatment
8 and therapy.

9 THE COURT: What diagnosis have you received, Mr.
10 Winfield?

11 MR. CARL WINFIELD: Mike Decaire, a Ph.D.,
12 diagnosed the Defendant as suffering from a dissociated
13 amnesia. Jeffrey Harris was contracted by the Department
14 of Rehabilitation, and diagnosed the Defendant as suffering
15 from a delusional disorder. James Recharte, of the North
16 Valley Mental Health of Salt Lake, diagnosed the Defendant
17 as suffering paranoia, personality disorders, and others
18 that can't be recalled right now.

19 THE COURT: In any other criminal case have you
20 ever been found not competent to proceed?

21 MR. CARL WINFIELD: Not that I'm aware of. These
22 diagnosis were made within the last year.

23 THE COURT: Well, the fact that you suffer from a
24 mental illness might be a basis on which charges will be
25 dismissed, but it also might be a basis on which you could

1 be found guilty, but mentally ill. Those are all
2 determinations that the court would have to make at an
3 appropriate point in time. Are you requesting the court to
4 appoint you an attorney?

5 MR. CARL WINFIELD: I'm only submitting my motion
6 to dismiss based on State misconduct that I have not been
7 afforded legal representation. So until the time...

8 THE COURT: Has bail been set in this matter, Mr.
9 Winfield? I'm assuming that the hearings that you've had
10 before the Magistrate were bail hearings.

11 MR. CARL WINFIELD: I know nothing about or
12 understand nothing about any prior hearings or other stages
13 of these proceedings.

14 THE COURT: Has bail been set in this matter, Mr.
15 Slavens, to your knowledge?

16 MR. SLAVENS: I don't. I do believe there was a
17 bail hearing, but I don't know what the...\$5,000, I think.

18 THE COURT: The court is going to appoint the
19 public defender to represent you in this matter, Mr.
20 Winfield. That is Mr. Hunt, who is there. Based upon your
21 motions the court is going to enter not guilty pleas at
22 this time on your behalf. We'll set this matter for a pre-
23 trial to be heard on October 24, at 10:00 a.m. What's the
24 State's position with respect to bail, Mr. Slavens?

25 MR. SLAVENS: Well, I'm quite concerned about

1 this Defendant. He has not only made threats prior to the
2 time he's been incarcerated, he has made threats since he
3 has been incarcerated. His only ties to the community are
4 the victims in this matter. He has absolutely no ties in
5 this community, and the people...

6 MR. CARL WINFIELD: That's an absolute false
7 interjection at this time. That's false information being
8 submitted to the record by the State.

9 THE COURT: What contacts do you have to the
10 community, Mr. Winfield?

11 MR. CARL WINFIELD: I have my entire family in
12 Salt lake City, the Salt Lake Valley, and in other places
13 that are contacts in the community.

14 THE COURT: Well, what he's talking about is
15 Millard County. What contacts...

16 MR. CARL WINFIELD: I would note this false
17 information being submitted again by the State, at this
18 time, with respect to my ties to the community.

19 THE COURT: Okay. So you have family in Salt
20 Lake. Do you also have family here in Millard County?

21 MR. CARL WINFIELD: Yes.

22 MR. SLAVENS: And to finish my argument...

23 THE COURT: Okay.

24 MR. SLAVENS: I think bail ought to be actually
25 higher. I don't know what the chance is of getting a

1 higher bail on a Class "A".

2 THE COURT: Well, these are just misdemeanors.

3 MR. SLAVENS: But I am quite concerned about
4 this. His own admission as to his mental capacities, that
5 concerns me as well. I don't think this Defendant should
6 be released on any terms until at least the mental
7 deficiencies and problems are addressed. The victims are
8 quite concerned about him being released because of threats
9 he has made inside of the jail and outside of the jail. I
10 don't think...

11 MR. CARL WINFIELD: He has false information,
12 Your Honor. As the Defendant I would submit that again the
13 State is submitting false information to the record with
14 respect to this case. There have been no threats, there
15 never were any threats either inside or out of the jail.
16 Again, this is just false information being submitted.

17 THE COURT: Okay. Those are just mere
18 allegations. If you deny them then...

19 MR. SLAVENS: There is a federal hold on them too
20 for probation violations.

21 THE COURT: What is your past criminal history,
22 Mr. Winfield? What prior convictions have you had?

23 MR. CARL WINFIELD: I would just remain with the
24 information and the motions that I've submitted today. I
25 will remain with that.

1 THE COURT: So you're not going to, you don't
2 want to tell me, is that what you're saying? Why I'm
3 asking that for is to determine what a reasonable bail is.
4 Those are normal questions that we ask people in setting
5 bail.

6 MR. CARL WINFIELD: Well, that would go back to
7 part of my request to be immediately transferred to a
8 hospital facility that can accommodate my psychological
9 needs for therapy and treatment, like I said earlier on the
10 record.

11 THE COURT: Yeah, that might occur, but that's
12 not going to occur at this point in time until there is
13 appropriate motions filed to that respect. The court will
14 accept, have you made a motion in writing, have you?

15 MR. CARL WINFIELD: There is another piece of
16 information that I will submit with my motion to dismiss
17 based on statements filed on the 8th of October,
18 approximately the 8th of October.

19 I received a copy of a notice, a notice of arraignment
20 set in this case. As for their evidence, on the
21 certificate of mailing I was listed as being Carl Alton
22 Winfield, Jr.; was listed as being the attorney for the
23 Defendant. That would go with my motion to dismiss for
24 lack of legal representation.

25 THE COURT: Now I've appointed you an attorney

1 now, Mr. Winfield. You don't have that excuse anymore.

2 MR. HUNT: Your Honor, may I be heard on that?

3 THE COURT: Yes.

4 MR. HUNT: When I asked Mr. Winfield a couple
5 questions that I could help him with bail he advised me to
6 stay away from him, and he's refused to speak to me since
7 that point. I would ask the court to reconsider
8 appointment.

9 THE COURT: Well, the court is going to continue
10 the appointment. If he doesn't, if he still remains
11 uncooperative you may file appropriate motions if you...But
12 based upon his representation it might be appropriate to
13 file a motion to determine competency to proceed. It
14 appears that, from my, it appears that Mr. Winfield
15 understands the legal process. It sounds like he's been in
16 the system before.

17 MR. CARL WINFIELD: There's more information I'd
18 like to submit at this time.

19 THE COURT: What is that, Mr. Winfield?

20 MR. CARL WINFIELD: In addition to my request to
21 be immediately transferred from the Millard County Jail
22 facilities, in 1986 and probably two or three years
23 following '86, I did give information at a lawsuit against
24 Millard County Jail facilities that were clearly not in the
25 best interest of the Millard County Jail facilities, and

1 totally opposed to the Millard County Jail facilities.

2 I can't, at this time, recall the name of the
3 Plaintiff or his attorneys, but that lawsuit was filed,
4 does exist, and as I said I did give information opposing
5 the Millard County Jail facilities. That would go with my
6 request also to be removed from the Millard County Jail
7 facilities.

8 THE COURT: Do you have any specific allegations
9 that you've been mistreated since you've been in the jail,
10 Mr. Winfield?

11 MR. CARL WINFIELD: Yes. I was allegedly smoking
12 a cigarette, at one point during my incarceration in the
13 last ten days. I was attacked by two Millard County
14 Sheriffs and was not, after being injured by the Sheriffs,
15 was not forwarded medical treatment for the injuries that I
16 sustained. I still am sustaining the injuries at this
17 point.

18 THE COURT: What injuries did you sustain?

19 MR. CARL WINFIELD: There were injuries to my
20 shoulder. My elbow was...after having been attacked by the
21 Sheriffs, one Sheriff stated while attacking me that he
22 would...

23 THE COURT: Did you receive contusions or...

24 MR. CARL WINFIELD: ...break my arm, he did make
25 the attempt to break my arm, at that point. I still have

1 not received medical treatment for those injuries.

2 THE COURT: Well, you may file a grievance. Do
3 you have any bruises you want to show the court at this
4 time to substantiate your claim?

5 MR. CARL WINFIELD: The claim is substantiated.

6 THE COURT: This court is going to continue bail
7 at \$5000.00, so we'll set this matter for pre-trial on
8 October the 24th, at 10:00 a.m. You may be excused Mr.
9 Winfield.

10
11 (WHEREUPON, the court hearing was dismissed until October
12 24th, at 10:00 a.m.)

13
14 THE COURT: The court calls the case of State of
15 Utah versus Carl Alton Winfield, Jr.

16 MR. CARL WINFIELD: Your Honor, I have some
17 psychological reports and two motions to submit on the
18 record during this hearing.

19 THE COURT: Okay. Have you consulted with your
20 attorney in these matters?

21 MR. CARL WINFIELD: If he's made any attempt to
22 contact me in the jail I'm not aware of it.

23 THE COURT: Mr. Hunt, have you tried to contact
24 Mr. Winfield?

25 MR. HUNT: The last communication I had with Mr.

1 anywhere around him, so I have not.

2 THE COURT: Let's, do you have the motions
3 prepared, Mr. Winfield?

4 MR. CARL WINFIELD: Yes.

5 THE COURT: Are they in written form and are you
6 going to make them orally?

7 MR. CARL WINFIELD: Orally now, and I'll submit
8 it in written form later.

9 THE COURT: Okay. What is your motion?

10 MR. CARL WINFIELD: My first motion is a motion
11 to dismiss based on ineffective assistance of Counsel. On
12 October 10, 1996, during the arraignment in this case, Mr.
13 Hunt requested of the court to withdraw from the Defense.
14 The attorney/client conflict between Mr. Hunt and the
15 Defendant was made clear at that time. However, Mr. Hunt's
16 request to withdraw was denied by the court.

17 THE COURT: Mr. Winfield, at that point in time I
18 had just appointed him to represent you. How could it have
19 been ineffective assistance? You said you didn't want an
20 attorney, is that correct?

21 MR. CARL WINFIELD: I'll just continue with the
22 motion. Is this being, is this on an electronically
23 recorded transcript?

24 THE COURT: It is, Mr. Winfield. It is.

25 MR. CARL WINFIELD: Okay. Would you like me to

1 start over so that I can put this clearly on the record?

2 THE COURT: Okay. Do the whole thing then, and
3 then I will respond.

4 MR. CARL WINFIELD: Okay. Motion to dismiss
5 based on ineffective assistance of Counsel on October 10,
6 1996, during the arraignment in this case Mr. Hunt
7 requested of the court to withdraw from the Defense. The
8 attorney/client conflict between Mr. Hunt and the Defendant
9 was made clear at that time. However, Mr. Hunt's request
10 to withdraw was denied by the court. Mr. Hunt has also
11 failed to authenticate to the court the existing
12 psychological information and mental condition of the
13 Defendant, or further move the court to examine the
14 Defendant's competency to be lawfully tried by the State.

15 I would ask the court to accept into evidence with
16 this motion three separate psychological reports of
17 diagnosed mental illnesses of the Defendant at a Utah State
18 Office of Rehabilitation, individualized written
19 rehabilitation program for psychiatric treatment the
20 Defendant has not yet received.

21 I have copies for the prosecutor and His Honor to
22 review. If I may direct the court's attention to various
23 diagnosis at one or two of the more important facts
24 contained within the psychological reports.

25 THE COURT: Hand them to the Bailiff. Okay. You

1 say you had two motions?

2 MR. CARL WINFIELD: Just a moment, Your Honor.
3 Yes. This is part of the motion to dismiss based in
4 ineffective assistance.

5 The psychological report, I have them in order,
6 directing your attention to the various things in these
7 reports. The psychological report of Mike Decaire, a
8 Ph.D., 8/29/95, page 3, paragraph 6, numbered 6. Mr.
9 Decaire diagnosed the Defendant as suffering dissociated
10 amnesia. I have these outlined in red, I believe.

11 THE COURT: Yes.

12 MR. CARL WINFIELD: And further on page 4,
13 paragraph numbered 7, he describes the Defendant's
14 imperative need for treatment and therapy.

15 THE COURT: Okay.

16 MR. CARL WINFIELD: The Level 2 psychological
17 evaluation of Jeffrey D. Harris, Ph.D., 12/15/95, it would
18 be the next one.

19 THE COURT: I've got it.

20 MR. CARL WINFIELD: Page 5, Mr. Harris diagnosed
21 the Defendant as suffering a delusional disorder, further
22 in the last sentence under functional limitations. That
23 would be just to top the diagnosis. Mr. Harris states the
24 Defendant's condition is severely debilitating.

25 THE COURT: Okay.

1 MR. CARL WINFIELD: The last two described
2 diagnosis by these clinical psychologists are as of yet
3 untreated at this time. The psychological report of James
4 D. Recharte, PSY.D., I'm not sure what that would be,
5 professional terms, psychiatrist, clinical psychologist.

6 THE COURT: It's a psychologist.

7 MR. CARL WINFIELD: ...of the Valley Mental
8 Health, 3/11/96, page 3, Mr. Recharte indicates the
9 Defendant is suffering a personality disorder with
10 narcissistic paranoia and anti-social features.

11 THE COURT: That's an Access Two diagnosis. He
12 says you have no diagnosis in Access One.

13 MR. CARL WINFIELD: Then again I don't understand
14 what the Access Two would be on...

15 THE COURT: Well, that means, most criminals who
16 have involved themselves in criminal activity...

17 MR. CARL WINFIELD: Well, I'd have to object to
18 the His Honor's alleged understanding of the
19 psychological...

20 THE COURT: Well, I go to the State Hospital
21 every Wednesday, Mr. Winfield. I have a working
22 understanding of Access One and Access Two diagnosis.

23 MR. CARL WINFIELD: My understanding of Access
24 Two was that that was long term, was observed as being some
25 long term conditions the Defendant has suffered.

1 THE COURT: No, Access Two deal more with
2 personality disorders. Do you have a second motion?

3 MR. CARL WINFIELD: On the Utah State Office of
4 Rehabilitation individualized written rehabilitation
5 program amendment of July '96, completed by a Vocational
6 Rehabilitation Counselor, Dan Crandall, Salt Lake City.
7 The Defendant is scheduled for a Level 2 Psychiatric
8 Examination, and 18 sessions of Psychotherapy. I think I
9 have that numbered page six.

10 THE COURT: Yes. I see that.

11 MR. CARL WINFIELD: The clerical error on this
12 page, Your Honor, is that wherever the term psychological
13 is noted in the rehabilitation program it is, in fact, the
14 psychiatrist who was paid to treat the Defendant, Dr. Gant,
15 of 1027 East South Temple, Salt Lake City, Utah. I'm not
16 positive of his first name, so I'm not going to state it.
17 It could be Richard, but I do know he is a psychiatrist and
18 that is his address.

19 THE COURT: Okay.

20 MR. CARL WINFIELD: And you see the initial date
21 was 7/96 to begin the Psychotherapy, and a completion date
22 of 7/96. That would be the extent of my first motion to
23 dismiss based on ineffective assistance.

24 THE COURT: Mr. Winfield, are you requesting the
25 court to appoint another attorney for you, or do you want

1 to represent yourself?

2 MR. CARL WINFIELD: I'm just submitting the
3 motions, Your Honor.

4 THE COURT: Any response from the State?

5 MR. ANDERSON: Well, I think the only, if I
6 deciphered what Counsel is saying he is perhaps trying to
7 raise, in effect trying to raise an issue about his
8 competency to proceed, Your Honor. If that is the case,
9 first of all, I'd say he demonstrated very good competency
10 before the court here this morning.

11 MR. CARL WINFIELD: I would object...

12 MR. ANDERSON: But on the other hand, if he feels
13 that he has a competency problem and cannot proceed because
14 of his competency why then I don't object to him being
15 committed to the mental hospital for a competency
16 evaluation, Your Honor.

17 MR. CARL WINFIELD: I would object, Your Honor...

18 MR. ANDERSON: I think that's what he's after.
19 I'm not sure.

20 MR. CARL WINFIELD: In that, intelligence has
21 nothing to do with mental illness as far as I can see or
22 understand. I may be one case in a million, but that's my
23 personal belief. Understanding that I'm mentally ill and
24 taking their word of these Ph.D. psychologists has nothing
25 to do with the fact that I do know that I feel as if I am

1 someone intelligent enough to point out to the court that
2 these things haven't been handled.

3 I've been in custody for 24 days, approximately, and
4 there has been no attempt by the State or the public
5 defense to bring these issues to the court's attention.
6 That's why I'm submitting them with the motion for
7 ineffective assistance to dismiss, based on ineffective
8 assistance from Counsel.

9 My second motion, Your Honor, is that I wrote you a
10 letter and requested...

11 THE COURT: Yes. I just got it this morning when
12 I came to court. You're requesting that there be a
13 transcript made of the last hearing.

14 MR. CARL WINFIELD: Yes. I requested in the
15 letter that you have there if you would, if I could direct
16 your attention to the letter. I requested the written
17 transcript of the arraignment on 10/10/96.

18 THE COURT: Yes.

19 MR. CARL WINFIELD: So that I may prepare with, I
20 asked for the transcript so that I could prepare the
21 motions that I have today. Have those transcripts been
22 prepared?

23 THE COURT: Well, I just received your request
24 today, Mr. Winfield. You directed it to me, and I'm only
25 here every other week.

1 MR. CARL WINFIELD: Well, can we note the post
2 mark on the envelope?

3 THE COURT: It was mailed October the 15th.

4 MR. CARL WINFIELD: Excuse me?

5 THE COURT: The post mark is October the 15th.
6 You dated the letter October the 11th.

7 MR. CARL WINFIELD: Okay. That's when it was
8 submitted to the jail staff to be mailed. At any rate,
9 10/10/96, there was a different prosecutor handling things.
10 Who was he?

11 THE COURT: Mr. Slavens I believe was here that
12 day.

13 MR. CARL WINFIELD: That was Mr. Slavens, okay.
14 Then this would be fine for...In fact, that was my
15 understanding, that it was Mr. Slavens. Who are you, Sir?

16 MR. ANDERSON: I am the chief county, Deputy
17 County Attorney Dexter Anderson.

18 MR. CARL WINFIELD: Thank you. My second motion
19 would be I, the Defendant, would submit that a motion to
20 dismiss based on prosecutorial misconduct during the
21 arraignment in this case, 10/10/96. The Prosecutor, Mr.
22 Slavens, was advised of the serious nature of the
23 Defendant's medical or mental condition, and the
24 Defendant's need for release or transfer to an appropriate
25 facility. After having been so advised of these

1 setbacks the Prosecutor made evident his deliberate
2 indifference to the Defendant's mental condition, and
3 detention within the Millard Jail Facility by requesting of
4 the court to raise the Defendant's bail. And further
5 offering no objections to the Defendant's motion to dismiss
6 on 10/10/96.

7 And I would ask the court at this time if you would
8 like to submit any kind of ruling on the motions submitted
9 by the Defendant to dismiss of 10/10/96.

10 MR. ANDERSON: Well, we certainly want to be on
11 the record, Your Honor, as opposing any motion to dismiss
12 on any of the bases that the Defendant has raised.

13 THE COURT: Anything else, Mr. Winfield?

14 MR. CARL WINFIELD: Your Honor, is there going to
15 be any ruling on the motion to dismiss?

16 THE COURT: Yes. I am going to rule on the
17 motions.

18 MR. CARL WINFIELD: The motion to dismiss based
19 on State misconduct of 10/10/96 as well, added to these two
20 motions?

21 THE COURT: Yes. The court was present on your
22 initial appearance before the court on October the 10th.
23 At that time, you did make the indication that you did
24 suffer from a mental illness. The court did appoint
25 counsel for you. You indicated at that time that you

1 didn't want Counsel or at least you didn't want Mr. Hunt.

2 MR. CARL WINFIELD: Well, I would object. I
3 indicated nothing at the time on the record, Your Honor.
4 Mr. Hunt just barely requested to withdraw from the
5 Defense.

6 THE COURT: Well, didn't you make some comment to
7 the effect that you didn't want any contact with him?

8 MR. CARL WINFIELD: You'd have to ask Mr. Hunt.

9 THE COURT: Well, I recall some statement to that
10 effect. That's why he requested the withdrawal. At this
11 time, the court, based upon your informing the court and
12 providing copies of psychological evaluations, which
13 indicate that you might suffer...Those were made in 1995.
14 The court is aware that a person's mental health changes,
15 as does his physical health. But based upon the
16 representation that you continue to suffer from a mental
17 illness on your behalf, the court is going to deny at this
18 time your motions to dismiss based upon ineffective
19 assistance of Counsel, because there hasn't been any
20 assistance. You've basically refused that assistance. But
21 based upon your indication that you desire, you continue to
22 represent that you suffer from a mental illness. Is that
23 correct, Mr. Winfield?

24 MR. CARL WINFIELD: Well, first of all I'd have
25 to object that I refused any assistance. I believe on

1 10/10/96 during the arraignment that Mr. Hunt was assigned
2 to proceed with the Defense in this case, and there is the
3 ineffective assistance. Everything I've brought to the
4 court's attention today I would believe that it would have
5 been Mr. Hunt's responsibility to do that.

6 THE COURT: And that's a possibility. But based
7 upon your representations today the court is going to order
8 that you be referred to the Utah State Hospital for an
9 evaluation to determine your competency to proceed.

10 The court will order that two alienists be appointed
11 to examine you to determine whether you meet the criteria
12 for competency to proceed pursuant to Utah State statute.
13 The court will order that that evaluation be done within
14 the next 30 days pursuant to statute. That this matter be
15 back before the court on, if possible, November the 22nd,
16 at 10:00 a.m.

17 The court will request that copies of the criminal
18 information and copies of the police reports in these
19 matters be referred to the examiners who are appointed to
20 examine Mr. Winfield, that copies of their reports be given
21 to Counsel.

22 Both the prosecution and Mr. Hunt will make a
23 determination that after, if the court finds that you're
24 competent to proceed then we'll take up the issue of
25 whether or not you want Counsel, Mr. Winfield.

1 MR. CARL WINFIELD: Your Honor, I would as the
2 Defendant demand that my right to a speedy trial be
3 observed. These motions that I've submitted, they have
4 nothing to do with whether or not the court should proceed
5 with competency hearings, or evaluations.

6 THE COURT: You're the person who has put your
7 mental health at issue, Mr. Winfield, both last time and
8 today. You're the one who has indicated that you're not,
9 don't have the ability to proceed because of your mental
10 illness.

11 The court cannot, based upon that fact, the court
12 cannot proceed until it determines that you are competent
13 to proceed. If the court determines, if the reports come
14 back and the court finds that you're not competent to
15 proceed then you'll be placed in a mental health system
16 until such time as they determine you are competent to
17 proceed.

18 If they determine that you are competent to proceed at
19 this point in time pursuant to State statute, then at that
20 point in time the court will set this matter for trial at
21 the earliest appointed time.

22 MR. CARL WINFIELD: This will bring me to my last
23 motion. I'd submit a motion for a speedy trial in this
24 case.

25 THE COURT: Well, once you're...

1 MR. CARL WINFIELD: The Defendant has a right to
2 be brought before a trial within 30 days of his
3 arraignment, and I'd move the court to observe that right
4 to a speedy trial at that time.

5 THE COURT: That is correct once the court has
6 determined that you're competent to proceed. You put your
7 mental health at issue, and you're the one that has done
8 that. Once it's determined that you are competent to
9 proceed, then, yes, we'll give you a trial within 30 days.

10 MR. CARL WINFIELD: And I would object again in
11 that this is a, you're bringing about a collateral issue,
12 and that these issues were brought forth with a motion to
13 dismiss based on ineffective assistance of Counsel. It has
14 nothing to do with the deed or where we should go with any
15 decision or competency hearings or evaluations. I would
16 object...

17 THE COURT: Well, you're the one who has put your
18 mental health at issue. You're the one who has presented
19 the court with the reports, so we'll see you in 30 days.
20

21 (WHEREUPON, the Hearing was concluded.)
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C E R T I F I C A T E

STATE OF UTAH)
 : SS
COUNTY OF WASATCH)

THIS IS TO CERTIFY that the Hearing was electronically recorded and thereafter caused by me, Richard C. Tatton, to be transcribed into typewriting to the best of my ability.

I FURTHER CERTIFY that I am not of kin or otherwise associated with any of the parties to said cause of action and that I am not interested in the event thereof.

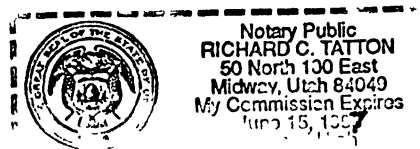
WITNESS my hand and official seal at Midway, Utah this 22nd day of November, 1996.

Richard C. Tatton

Richard C. Tatton, CSR

My commission expires:

June 15, 1997



36

ADDENDUM C

IN THE 4TH JUDICIAL DISTRICT FILLMORE COURT

MILLARD COUNTY, STATE OF UTAH

STATE OF UTAH	:	MINUTE ENTRY
	:	
PLAINTIFF	:	CASE NUMBER 961401116 FS
	:	DATE 12/06/96
VS	:	HONORABLE DONALD J EYRE
	:	COURT REPORTER TAPE 1 COUNT 4
WINFIELD, CARL ALTON JR	:	COURT CLERK MAW
DEFENDANT	:	
IN CUSTODY	:	

TYPE OF HEARING: HEARING
PRESENT: PLAINTIFF DEFENDANT

P. ATTY. ANDERSON, DEXTER L.
D. ATTY. HUNT, LAWRENCE H

DEF. HAD QUESTIONS OF THE COURT REGARDING PREVIOUS APPEARANCES IN COURT. HE HAD A QUESTION FOR HIS COUNSEL. THE DEFENDANT SEEMS TO BE EXAMINING HIS COUNSEL. HE CLAIMS HE IS UNDER HIS 6TH AMENDMENT RIGHTS. THE COURT INFORMED THE DEF THAT HE IS STILL UNDER A HOLD FROM THE FEDERAL MARSHALLS. ATTY ANDERSON REPLIED TO ONE OF THE QUESTIONS MR. WINFIELD ASKED HIS COUNSEL. THE COURT DIRECTED THE DEFENDANT TO MAKE HIS MOTIONS THROUGH COUNSEL. THE DEFENDANT ASKED THAT MR. HUNT WITHDRAW AS COUNSEL AND HE WISHED TO REPRESENT HIMSELF IN THIS MATTER. THE COURT QUESTIONED THE DEFENDANT AS TO HIS UNDERSTANDING OF THE CONSEQUENCES WHICH MAY ARISE FROM HIM ACTING AS HIS OWN ATTORNEY. THE COURT EXPLAINED THAT THE DEFENDANT WOULD BE UNDER THE SAME RULES OF LAW AS IF HE HAD COUNSEL REPRESENTING HIM. THE DEF. WANTS TO PROCEED WITH A PRETRIAL TODAY, THE COURT EXPLAINED THAT THE DEFENDANT WOULD NEED TO FOLLOW CERTAIN PROCEEDINGS. THE COURT IS AWARE OF A LETTER FROM THE DEF. DEF ASKED THAT ALL OF HIS MOTIONS BE SUBMITTED IN WRITTEN FORM THE COURT REQUIRED THE DEFENDANT TO SUBMIT ALL OF HIS MOTIONS IN WRITING AS HE ASKED. THE COURT WILL KEEP THE FILE AND THE MATTER WILL BE SET FOR TRIAL BY JURY. A REQUEST IN

WRITING FOR A JURY TRIAL WILL HAVE TO BE SUBMITTED AND A DATE WILL BE SET.THE COURT WILL TAKE A RECESS TO ALLOW THE DEF TO SPEAK TO THE COUNTY ATTORNEY.

CONTINUED: TAPE 1 CPIMT 1444 ATTY ANDERSON REPORTED TO THE COURT THAT HE HAD TRIED TO WORK WITH THE DEF ENDANT ON A PLEA BARGAIN AND CONCLUDED THAT NO AGREEMENT HAD BEEN REACHED. THE DEF STILL INSISTS THAT HE IS BEING RETALIATED AGAINST BY THE JAIL STAFF. HE IS AGAIN REQUESTING THAT HE BE REMOVED FROM THIS JAIL. THE COURT WILL NOT ENTERTAIN THIS REQUEST. MR. WINFIELD ALSO ASKED THAT HE HAVE ADDITIONAL TIME TODAY TO PRESENT HIS MOTIONS. THE C COURT DENIED THAT REQUEST ALSO. HE WAS AGAIN REMINDED THAT HE MUST FOLLOW THE RULES JUST AS OTHER COUNSEL IS REQUIRED TO DO.

ADDENDUM D

1 that we will have them to refer to.

2 MR. WINFIELD: And quickly, I would object to Mr.
3 Slavens submission that the witnesses would have nothing
4 material to testify about in that he doesn't know....

5 THE COURT: He is asking you what they, we have to
6 determine that, what is it that they would, if they were
7 called to speak, just in a brief summary, what would they
8 say?

9 MR. WINFIELD: Quickly, I only want to enter my
10 objection that he doesn't know the witnesses. He doesn't
11 know what they could testify to or what they couldn't
12 testify to and I would just simply object to his submission.

13 THE COURT: Tell me then, tell me then so I can
14 know.

15 MR. WINFIELD: As I stated among other things,
16 several other things, they would be character witnesses for
17 the Defendant, Your Honor. As I stated earlier, my
18 objection is only is that he doesn't know the witnesses, he
19 doesn't know what they would testify to or what they
20 wouldn't.

21 THE COURT: They would testify of your good
22 character?

23 MR. WINFIELD: That is correct.

24 THE COURT: Anything else?

1 MR. WINFIELD: No, Your Honor.

2 THE COURT: Mr. Slavens, what do you say?

3 MR. SLAVENS: It is not relevant. I mean, I guess
4 if he wants to make that an issue we could bring in a bunch
5 of people about his character, but I don't think that is
6 relevant and we would object to them testifying regarding
7 that. But if he wants to, if the Court says that is
8 relevant and he wants to say that's what they would come
9 down and say he is a good person I don't have a problem.
10

11 THE COURT: Alright.

12 MR. WINFIELD: I object. The relevancy is that
13 the witnesses credibility far outweighs the alleged victims
14 credibility and that is what would have been established had
15 they have been served and brought to my trial today. I
16 would just stay with my original objection and my objection
17 to Mr. Slavens supposed knowledge of who the witnesses are
18 and what they may testify to.

19 THE COURT: Alright. Mr. Winfield, proceeding on.
20 That is your second point with this motion. Go on.

21 MR. WINFIELD: We are addressing the motion to
22 dismiss?
23

24 THE COURT: Yes. We have got to move along here.
25 We are running out of time so I have got to push forward.

MR. WINFIELD: I, the Defendant, I also argued

1 Deputy County Attorney's Office and to the Court Clerk,
2 which I am not sure if both packages were dropped off at the
3 Deputy County Attorney's Office or if they were delivered to
4 their address location. But the officer is in the Court
5 room; that would be Officer Steve O'Cam and he took with him
6 the inmate request form that reads "I need the County
7 Attorney's Office and the Court Clerk to sign for the legal
8 packages marked legal motions, if they could sign this
9 request that would be fine." Contained within those legal
10 packages were the entirety of the Defendant's motions to
11 dismiss, request for information, order for service of
12 summons, with all the attached copies of subpoenas and so
13 forth. If I may enter what has been signed apparently by
14 Dexter Anderson, as the motion, legal packages with all the
15 contained information that he signed that was received on
16 the 19th, the same day that the subpoenas were stamped. The
17 county attorney's office have had the order for service of
18 summons and all the so attached subpoenas from the 19th of
19 December. If I could have the Bailiff...

20 THE COURT: Let me ask you this, Mr. Winfield.
21 This, you have raised two questions that pose a peculiar
22 problem for this case. Again, I will just restate, it is
23 not my job to get your witnesses here, but it does pose a
24 problem.

1 You have also raised the question of counsel. I
2 understand that Judge Eyre was very careful about that
3 question with you and you were determined competent and you
4 are entitled to represent yourself, which you are doing this
5 morning. That is your business and that's your choice and I
6 respect that. However, if you claim that this matter, if
7 you claim that you don't have your witnesses here for which
8 you wish to have the case dismissed, I have to make a
9 decision on that. If you claim you don't have your
10 witnesses here for whatever reasons and you want the case
11 continued, I have to consider that. If you claim that you
12 want an attorney appointed, where you certainly don't have
13 one today and that would result in a continuance of the
14 trial as a possibility, I suppose. What is it that you are
15 requesting from this?
16

17 MR. WINFIELD: I definitely don't want to spend
18 too much more time incarcerated and that has been the
19 biggest problem.

20 THE COURT: I can understand that, that would delay
21 the case and would - is bail set in this matter?

22 MR. SLAVENS: Yes, but there is a Federal hold on
23 him.

24 THE COURT: I see. In any event, you are right.
25 That, a delay may cause further incarceration. Are you

1 this morning, Your Honor. I have the evidence, we have the
2 witnesses here in the Court room today; they can be
3 interviewed briefly.

4 THE COURT: This is what I am going to do on that.
5 I haven't had preparation for this. I don't have time to
6 handle it now. I will handle it at noon. We will renew
7 this motion; I will consider it then. I don't have the time
8 to do it now. I don't have the document you are speaking
9 of; we will have to gather them up. We will make - Mr.
10 Slavens, do you have any information about this, did you
11 know about this?
12

13 MR. SLAVENS: I have no idea what he is talking
14 about.

15 THE COURT: We are going to have to address it
16 then. This is a newly made motion and that is when we will
17 hear it. So you can prepare yourself for that at noon. We
18 will take the time to do it then, because we will excuse our
19 jury then to do that.

20 MR. WINFIELD: Okay, Your Honor, thank you.

21 THE COURT: Anything else?

22 MR. WINFIELD: I would just like to proceed with
23 trial.

24 THE COURT: Mr. Slavens, anything?

25 MR. SLAVENS: No, Your Honor.

1 turn. On the motion to dismiss, I will note for the record,
2 I have read that and heard argument. The Court will note in
3 this matter that the Defendant was determined to be
4 competent; that he has a right under the law to represent
5 himself and did request the withdrawal and refusal of his
6 prior, previously appointed attorney. Because of that, many
7 of the issues and arguments of the Defendant are moot, in
8 principally including that of conflict, preferred counsel,
9 other questions of matters or legal rights or defects that
10 he has claims that should be raised, can and could be raised
11 with the motion to dismiss. The Court notes that the
12 Defendant has raised a motion to dismiss at this present
13 time. He has the opportunity to do that and has exercised
14 that right. I don't find that the motion is sustained under
15 the law for the reasons stated or argued and I will deny the
16 motion.
17

18 MR. WINFIELD: I am sorry, I didn't hear the
19 reason, Your Honor. I am sorry. I didn't hear...

20 THE COURT: With respect. I deny the motion. I
21 don't find the legal basis as set forth under the motion and
22 argument to be satisfactory so I deny the motion. I don't
23 find that they are sustained under the reasons that you
24 stated.
25

46 Also the question of the witnesses is more difficult

1 staying you do not want a continuance for either reason?

2 MR. WINFIELD: That is my main motivation for
3 requesting to proceed with the trial today, is that I have
4 been incarcerated for three months and there have been
5 several opportunities by the deputy county attorneys and the
6 public defense...

7 THE COURT: In raising these complaints then, you
8 are not asking for a continuance of the trial.

9 MR. WINFIELD: I am not asking for a continuance.

10 THE COURT: I will consider it for a motion to
11 dismiss.

12 MR. WINFIELD: I know there is no, that the
13 availability for these things to be handled is limited so I
14 would remain with whatever the Court decides to do with
15 respect to my motions today.

16 THE COURT: Let me just say this, let me also just
17 alert you in terms of a continuance if that is a
18 possibility. I would consider this. It is very difficult
19 to manage jury trial settings. It is difficult to for us to
20 find the days available to schedule them and to get people
21 here and have a jury trial. It is less difficult for a
22 trial to the bench. One possibility is to continue this
23 case, to attempt reassigning an attorney, to attempt to
24 reschedule this matter and get witnesses here. Another
25